

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF ENERGY
OFFICE OF ELECTRIC DELIVERY AND ENERGY RELIABILITY

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TransAlta Energy Marketing (U.S.) Inc.)

Docket No. EA-216-C

**TRANSALTA ENERGY MARKETING (U.S.) INC.
ANSWER TO THE SIERRA CLUB'S MOTION TO INTERVENE**

Pursuant to Section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824(e) (2006), Part 205, Subpart W of the U.S. Department of Energy's ("DOE") regulations, 10 C.F.R. § 205.300, *et seq.* (2010), and Rule 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedures, 18 C.F.R. § 385.214 (2010), as referenced by DOE in its Notice of Application published in the Federal Register on January 21, 2011, 76 Fed. Reg. 3881 (Jan. 21, 2011) ("Notice of Application"), TransAlta Energy Marketing (U.S.) Inc. ("TEMUS") hereby opposes the Sierra Club's Notice of Intervention and Motion to Intervene ("Motion to Intervene") submitted to DOE on February 22, 2011. The Motion to Intervene fails to demonstrate an interest that may be directly affected by the outcome of this proceeding and should be denied.

The Notice of Application stated that any person desiring to become a party to this proceeding should submit a petition to intervene in accordance with Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214. Rule 214 requires a movant seeking to intervene in a proceeding to "state the movant's interest in sufficient factual detail to demonstrate" that (i) the movant has a right to participate conferred by statute or by Commission rule, order, or other action, (ii) the movant "represents an interest which may be directly affected by the outcome of the proceeding," or that (iii) the movant's participation is in

the public interest. The Motion to Intervene does not state that Sierra Club has a right to participate conferred by statute or rule.

The basis for Sierra Club's intervention is its stated interest in "working to reduce our reliance on coal and replace it with cleaner, less damaging alternatives."¹ Citing its interest in minimizing the use of fossil fuels to generate electricity, Sierra Club moves to intervene in this proceeding in order to request DOE to conduct a full Environmental Impact Study ("EIS") of TEMUS' request for authorization to export electricity to Canada.² The Motion to Intervene states that such an EIS will inform DOE and the public of the emissions "associated with TEMUS' authorization to sell excess power to Canada,"³ and will include discussion of alternatives to exporting electricity such as decreasing the amount of electricity generated "at the most polluting facilities" and "making up any capacity shortfall with cleaner power that would otherwise be exported to Canada."⁴ It is only through Sierra Club's interest in emissions by power plants that Sierra Club claims an interest in this proceeding.

Sierra Club's stated interest in the effect of electric generators on the environment is too indirectly related to this proceeding to constitute sufficient grounds for intervention under Rule 214 because such interest can not be "directly affected by the outcome of the proceeding." TEMUS' request for authorization to export electricity pursuant to Section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824(e) (2006), is not specific to electricity generated by any single generator and TEMUS is not requesting authorization to construct any transmission

¹ Motion to Intervene at 1.

² *Id.* at 3.

³ *Id.*

⁴ *Id.* at 4.

facilities, let alone generators that might produce electric energy to be exported.⁵ Moreover, under Section 202(e) of the FPA and DOE's implementation thereof, the focus of this proceeding is the impact of the export of electricity on the reliability of the U.S. electric system, including whether renewing TEMUS' authority to export electricity to Canada will impair the sufficiency of electric supply within the United States or the operational reliability of the domestic transmission system.⁶ This proceeding is not focused on the contracts for sale of electricity to be exported or even the type of fuel used to generate the electricity which might be exported under the requested authorization. Additionally, the effect of authorizing TEMUS to export electricity on the nature of the fuel used to generate that electricity is speculative, and even an extensive EIS as endorsed by the Sierra Club "need not discuss remote and conjectural consequences."⁷

In addition, Sierra Club incorrectly assumes that exporting electricity will cause environmental harm from electricity generating units forced to run at additional capacity to allow TEMUS to export electricity. However, the generators Sierra Club opposes are base load coal-fired power plants whose production of electricity will neither increase if DOE renews TEMUS' export authorization nor decrease if TEMUS' export authorization is not renewed. Neither a full EIS nor any action potentially taken by DOE in this proceeding will affect the output of those base load generators.

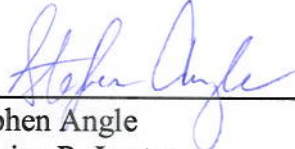
⁵ As noted in TEMUS' application for renewal of its authorization to export electricity of Canada, TEMUS does not own but is affiliated with TransAlta Corporation, the indirect owner of the Centralia power plant in Centralia, Washington. TEMUS is a power marketer that does not own any electric generation or transmission facilities.

⁶ See 16 U.S.C. § 824(e); *TransAlta Energy Marketing (U.S.) Inc.*, No. EA-216-B (May 17, 2006).

⁷ *Sierra Club v. Hodel*, 544 F.2d 1036, 1039 (9th Cir. 1976) (affirming district court's rejection of a request for an EIS to consider the effect of an energy sales contract upon other contracts and energy users in the same market and the effect of the contract on additional construction of generation); see also *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974) ("A reasonably thorough discussion of the significant aspects of the probable environmental consequences is all that is required by an EIS.")

For the foregoing reasons, the Motion to Intervene fails to demonstrate that Sierra Club's interest expressed therein "may be directly affected by the outcome" of this proceeding, and the Motion to Intervene should be denied.

Respectfully submitted,



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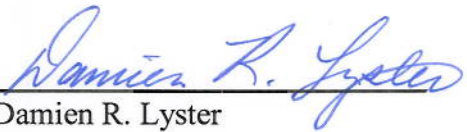
March 9, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the TransAlta Energy Marketing (U.S.) Inc. Answer to the Sierra Club's Motion to Intervene filed with the Department of Energy on March 9, 2011, upon the Sierra Club by e-mail and by United States first class mail, addressed as follows:

Gloria D. Smith, Senior Attorney
Sierra Club
85 Second Street, Second floor
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Dated at Washington, DC this 9th day of March, 2011.


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